IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

OP.No. 20448 of 2001(H)

PETITIONER:

M/S.G.J.S.FIREWOOD,
PUNALUR, REPRESENTED BY DANIEL V.GEORGE
PARTNER, RESIDING AT VINI VILLA,
VETTIPUZHA SOUTH, PUNALUR.

BY ADV. DR.K.B.MUHAMED KUTTY (SR.)

RESPONDENTS:
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1. THE SALES TAX OFFICER,
PUNALUR.

2. THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

3. THE DEPUTY TAHSILDAR (REVENUE RECOVERY),
PUNALUR.

BY ADV.SHRI.C.K.GOVINDAN, GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 20/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.No. 20448/2001

ORDER ON CMP NO. 33148/2001 IN O.P.No. 20448/2001

DISMISSED.

20/03/2007 SD/- (C.N.RAMACHANDRAN NAIR, JUDGE)

ORDER ON I.A.No. 11981/2003 IN CMP NO. 33148/2001 IN O.P.No. 20448/2001

DISMISSED.

20/03/2007 SD/- (C.N.RAMACHANDRAN NAIR, JUDGE)

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE ORDER NO.12180413/89-90 DATED 31/12/99 OF THE 1ST RESPONDENT.

P2 : COPY OF THE ORDER NO.1218 0413/89-90 DATED 23/2/2000 OF THE 1ST RESPONDENT.

P3 : COPY OF THE OBJECTION DATED 13/12/99 SUBMITTED BY THE PETITIONER BEFORE 1ST RESPONDENT.

P4 : COPY OF THE REVISION ORDER FOR 89-90 IN RP 22/2000 DATED 10/7/2000 OF COMMISSIONER OF COMMERCIAL TAXES, KOLLAM.

P5 : COPY OF THE ORDER 08/05/2001 OF 2ND RESPONDENT.

// TRUE COPY //

PA TO JUDGE

jg

C.N.RAMACHANDRAN NAIR, J.

O.P. No. 20448 of 2001

Dated, this the 20th day of March, 2007

J U D G M E N T

Heard the learned senior counsel appearing for the petitioner and the learned Government Pleader.

2. Petitioner is challenging Ext.P5 order, whereunder the Commissioner of Commercial Taxes has sustained penalty levied on petitioner under Sec. 45 A of the KGST Act for the year 1989-90. The penalty was levied for suppression of purchase and sales turnover of rubber wood during the year 1989-90 by the petitioner. Even though the petitioner under agreement with various planters, purchased and sold rubber trees, the turnover accounted was only Rs. 2,78,500/-. However, the Assessing Officer verified the turnover at the hands of the Planters, who sold the trees to the petitioner and found that petitioner has suppressed a turnover of Rs. 18 lakhs. He accordingly levied penalty at double the amount of tax i.e. Rs. 2,32,376/-. In first revision, penalty was reduced to Rs. 81,230/- by the Deputy Commissioner. Even though the petitioner filed second revision against the said order of the Deputy Commissioner, the

Commissioner simultaneously initiated proceedings under Sec. 37 of the KGST Act to reverse the order of the Deputy Commissioner in first revision, as the said order according to him was prejudicial to the interest of the revenue. Both the revisions filed by the petitioner and suo moto proceedings initiated under Sec. 37 were disposed of vide Ext.P5 proceedings, by which, the order of the Assessing Officer imposing penalty is restored by the Commissioner. It is against this order; this Original Petition is filed by the petitioner.

3. The learned counsel for the petitioner contended that this is not a case of suppression of turnover because penalty levied is based on assessment, wherein turnover assessed is based on estimation. The learned Government Pleader on the other hand contended that revised assessments are sustained in 2nd appeal by the Tribunal, which is final and petitioner has accepted the revised assessment by remitting the tax. According to the learned Government Pleader, suppression is massive and evident from sales figures admitted by the Planters, from whom the petitioner purchased the rubber trees under agreement with them

without disclosing the number of trees. I do not think that there is any scope for interference with levy of penalty because suppression is proved beyond doubt through confirmation of assessment, which is no longer under challenge. In so far as, the quantum of suppression is concerned, the Assessing Officer computed turnover based on returns filed by the Planters, though the Assessing Officer made an addition of 25% towards gross profit. In any case, since the assessment has become final there is no scope for interference with the quantum on suppressed turnover estimated based on which penalty is levied. However, I find some force in the contention of the learned counsel for the petitioner that it is not a fit case for levying maximum penalty because petitioner has without contest remitted the assessed tax after the Tribunal's order. More over, the findings of the Deputy Commissioner is that the suppressed turnover itself to some extent is the result of estimation, which is a matter of controversy. Therefore, I modify Ext.P5 by reducing penalty to the equal amount of tax i.e. from Rs. 2,32,376/- to Rs. 1,16,188/-. However, reduction is granted on condition that the

petitioner clears the arrears of tax on or before 15/05/2007. If petitioner does not make payment by then the reduction granted will stand cancelled. Since there was Amnesty benefit during pendency of this OP, interest on the reduced amount is also reduced by 50%, provided, if the entire arrears are paid with interest at the above rate on or before 15/05/2007. If payment is not made as above, waiver of interest granted will also stand vacated.

This Original Petition is disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg